

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

JEROME L. SCHMIDT and LAURA A. SCHMIDT,

Plaintiffs,

v.

Case No. 05-CV-605

PATRICK J. HUDEC, MARY HUDEC,
UNITED STATES OF AMERICA,
MUERER & MURPHY, S.C.,
n/k/a MURPHY & VOLBRECHT, S.C.,
ROBERT DIAMOND, SR.,
RURAL COMMUNITY DEVELOPMENT, and
CODY, BARDEN, DANIELS & PALO, INC.,

Defendants.

ORDER

On March 12, 2007, the court entered judgment in favor of plaintiffs Jerome and Laura Schmidt and defendant United States of America. The judgment ordered dissolution of the Schmidt-Hudec Investments partnership, sale of the real estate described in the complaint pursuant to Wis. Stat. §§ 178.32 and 178.33(1), and distribution of the net sale proceeds as follows: 55 percent to the plaintiffs and 45 percent to defendant United States in partial payment of defendants Patrick and Mary Hudec's unpaid tax debt. On February 1, 2008, plaintiffs amended their complaint to include additional defendants that plaintiffs believed may claim interests in the proceeds from the sale of the real estate described in the complaint.¹

In their second amended complaint, plaintiffs allege that defendants Meurer & Murphy, S.C., n/k/a Murphy & Volbrecht, S.C. ("Murphy Law Firm"), Robert Diamond,

¹The court granted plaintiffs leave to amend their complaint in an order issued on the same day that plaintiffs filed their amended complaint.

Sr. ("Diamond"), Rural Community Development ("Rural"), and Cody, Barden, Daniels & Palo, Inc. ("Cody"), all hold judgments against defendant Patrick J. Hudec. On March 19, 2008, and May 7, 2008, Plaintiffs moved for default judgment against all of these additional defendants.² In their motions, plaintiffs also seek an order declaring that title to the property in question shall vest in the purchaser at judicial sale free and clear of any liens held by the Murphy Law Firm, Diamond, Rural or Cody.

It appears that summons were returned executed for each of the additional defendants named in the second amended complaint. No answers or responsive pleadings have been filed by these defendants. Plaintiff's counsel filed two affidavits demonstrating that all of the additional defendants were properly served and have failed to respond within 20 days as required by Fed.R.Civ.P. 12(a)(1)(A). (Docket #81 and #88). The United States filed responses to the plaintiffs' motions indicating that it does not oppose the motions. (Docket #86 and #91). Defendants Patrick and Mary Hudec did not file a response to the motions.

Under Fed.R.Civ.P. 55, the court may enter a default judgment when a party against whom affirmative relief is sought fails to plead or otherwise defend. The decision to enter default lies within the district court's discretion. *O'Brien v. R.J. O'Brien & Assocs., Inc.*, 998 F.2d 1394, 1398 (7th Cir. 1993) (citation omitted). Due to the defendants' failure to plead or otherwise defend, the court will grant the plaintiffs' motions for default judgment.

²Plaintiffs' first motion seeks default judgment against defendants Murphy Law Firm and Cody, and the second motion seeks either default judgment or summary judgment against defendants Diamond and Rural. (Docket #80 and #90).

Accordingly,

IT IS ORDERED the plaintiffs motion for expedited decision (Docket #92) be and the same is hereby **DENIED** as moot.

IT IS FURTHER ORDERED that the plaintiffs' motion for default judgment against defendants Meurer & Murphy, S.C., n/k/a Murphy & Volbrecht, S.C., and Cody, Barden, Daniels & Palo, Inc. (Docket #80) be and the same is hereby **GRANTED**;

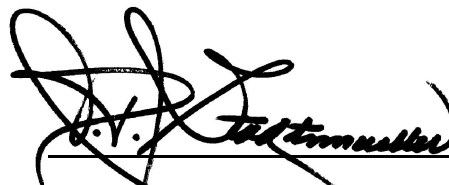
IT IS FURTHER ORDERED that plaintiffs' motion for default judgment or, in the alternative, summary judgment against defendants Robert Diamond, Sr., and Rural Community Development (Docket #90) be and the same is hereby **GRANTED**;

IT IS FURTHER ORDERED that following the sale of property conducted pursuant to the court's order and judgment dated March 12, 2007 (Docket #55 and #56), title shall vest in the purchaser of such property free and clear of any liens of defendants Meurer & Murphy, S.C., n/k/a Murphy & Volbrecht, S.C., Cody, Barden, Daniels & Palo, Inc., Robert Diamond, Sr., or Rural Community Development.

The clerk of the court is directed to enter judgment accordingly.

Dated at Milwaukee, Wisconsin, this 22th day of September, 2008.

BY THE COURT:



J.P. Stadtmueller
U.S. District Judge